UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
DAVID BENGOA and JOSE COLULA, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

M&F RESTAURANT CORPORATION d/b/a SPOLINI'S ITALIAN RESTAURANT, and SERGIO LAZZINARO,

Defendants.
--X

DOCKET NO. 13-cv-00788 (FB)(JMA)

ANSWER WITH AFFIRMATIVE DEFENSES

JURY TRIAL DEMANDED

The Defendants M & F RESTAURANT CORPORATION d/b/a SPOLINI'S ITALIAN RESTAURANT, and SERGIO LAZZINARO by their attorneys, THE SCHER LAW FIRM, LLP, answering the COMPLAINT, pleads as follows:

INTRODUCTION

1. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "1" of the Complaint.

2. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "2" of the Complaint.

JURISDICTION AND VENUE

3. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "3" of the Complaint.

4. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "4" of the Complaint.

PARTIES

5. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "5" of the Complaint.

6. Deny the allegations set forth in paragraph number "6" of the Complaint, except admit that the Defendant M & F Restaurant Corporation ("M & F") is a domestic business corporation organized under the laws of the State of New York, with a principal place of business at 116-25 Metropolitan Avenue, Kew Gardens, New York 11418.

7. Deny the allegations contained in paragraph numbered "7," except admit that the Defendant Sergio Lazzinaro ("Lazzinaro") is a supervisor who participates in the day-to-day operations of M & F.

8. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "8" of the Complaint.

9. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "9" of the Complaint.

10. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "10" of the Complaint.

11. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "11" of the Complaint.

12. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "12" of the Complaint.

13. Deny the allegations contained in paragraph number "13" of the Complaint.

14. Deny the allegations contained in paragraph number "14" of the Complaint.

15. Deny the allegations contained in paragraph number "15" of the Complaint.

16. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "16" of the Complaint.

STATEMENT OF FACTS

17. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "17" of the Complaint.

18. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "18" of the Complaint.

19. Deny the allegations contained in paragraph number "19" of the Complaint.

20. Deny the allegations contained in paragraph number "20" of the Complaint

21. Deny the allegations contained in paragraph number "21" of the Complaint.

22. Deny the allegations contained in paragraph number "22" of the Complaint.

23. Deny the allegations contained in paragraph number "23" of the Complaint.

24. Deny the allegations contained in paragraph number "24" of the Complaint.

25. Deny the allegations contained in paragraph number "25" of the Complaint.

26. Deny the allegations contained in paragraph number "26" of the Complaint.

27. Deny the allegations contained in paragraph number "27" of the Complaint.

28. Deny the allegations contained in paragraph number "28" of the Complaint.

29. Deny the allegations contained in paragraph number "29" of the Complaint.

30. Deny the allegations contained in paragraph number "30" of the Complaint.

31. Deny the allegations contained in paragraph number "31" of the Complaint.

32. Deny the allegations contained in paragraph number "32" of the Complaint.

33. Deny the allegations contained in paragraph number "33" of the Complaint.

34. Deny the allegations contained in paragraph number "34" of the Complaint.

STATEMENT OF CLAIM

COUNT I
[Violation of the Fair Labor Standards Act]

35. Defendants re-respond to each and every allegation and statement contained in paragraphs "1" through "34" of this Complaint as if fully set forth herein.

36. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "36" of the Complaint.

37. Admit that M & F employed the Plaintiffs, as alleged in paragraph numbered "37," but deny that Lazzinaro employed the Plaintiffs as alleged in paragraph numbered "37."

38. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "38" of the Complaint.

39. Deny the allegations contained in paragraph number "39" of the Complaint.

40. Deny the allegations contained in paragraph number "40" of the Complaint.

41. Deny the allegations contained in paragraph number "41" of the Complaint.

42. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "42" of the Complaint.

43. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "43" of the Complaint.

44. Deny the allegations contained in paragraph number "44" of the Complaint.

45. Deny the allegations contained in paragraph number "45" of the Complaint.

46. Deny the allegations contained in paragraph number "46" of the Complaint.

47. Deny the allegations contained in paragraph number "47" of the Complaint.

48. Deny the allegations contained in paragraph number "48" of the Complaint.

49. Deny the allegations contained in paragraph number "49" of the Complaint.

50. Deny the allegations contained in paragraph number "50" of the Complaint.

51. Deny the allegations contained in paragraph number "51" of the Complaint.

COUNT II
[Violation of the New York Labor Law]

52. Defendants re-respond to each and every allegation and statement contained in paragraphs "1" through "51" of this Complaint as if fully set forth herein.

53. Deny knowledge or information sufficient to admit or deny the allegations set forth in paragraph number "53" of the Complaint.

54. Deny the allegations contained in paragraph number "54" of the Complaint.

55. Deny the allegations contained in paragraph number "55" of the Complaint.

56. Deny the allegations contained in paragraph number "56" of the Complaint.

57. Deny the allegations contained in paragraph number "57" of the Complaint.

58. Deny the allegations contained in paragraph number "58" of the Complaint.

59. Deny the allegations contained in paragraph number "59" of the Complaint.

60. Deny the allegations contained in paragraph number "60" of the Complaint.

61. Deny the allegations contained in paragraph number "61" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

62. The Defendants are not "employers" engaged in interstate commerce.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

63. Plaintiffs are not entitled to any recovery of damages, including liquidated damages because any alleged acts or omissions by Defendants were not willful and were made in good faith.

AS AND FOR AN THIRD AFFIRMATIVE DEFENSE

64. The Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches, waiver, release, estoppel, and/or unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

65. The Plaintiffs' claims are barred, in whole or in part, but the applicable statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

66. The Plaintiffs fail to state a cause of action upon which relief may be granted.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

67. The claims alleged on behalf of the Plaintiffs require individualized inquiries that render impracticable and unworkable a collective and/or class action method of adjudication of said allegations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

68. Plaintiffs' claims, in whole or in part, are barred by the *de minimus* doctrine.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

69. The Complaint fails to state a claim upon which attorneys' fees can be awarded.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

70. Plaintiffs' claims, in whole or in part, are barred by their failure to exhaust administrative remedies under applicable wage and hour and benefits laws.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

71. At all times herein Defendants were not Plaintiffs' employer and are thus not proper parties.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

72. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

73. The Defendants' defense to certain allegations contained in the Complaint rests upon documentary evidence.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

74. The Plaintiffs are not appropriate class representatives because they fail to share commonality with the other purported class members.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

75. This Court does not have personal jurisdiction over the Defendants.

76. The Plaintiffs' process server failed to ask the person who was served with the Complaint whether he was in the military service of the United States pursuant to 50 App. U.S.C. § 521.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

77. M & F does not have gross revenues in excess of $500,000.00.

WHEREFORE, the Defendants demand judgment dismissing the Complaint in its entirety, along with such other and further relief the Court deems just, proper and equitable.

Dated: Carle Place, New York
March 11, 2013

THE SCHER LAW FIRM, LLP
Attorneys for the Defendants

Austin Graff (AG-0096)
One Old Country Road, Suite 385
Carle Place, New York 11514
(516) 746-5040

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